

News Release



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U.S. Labor Department Sues Miami Corporation to Restore Employee Contributions to Abandoned 401(k) Plan

MIAMI -- The U.S. Department of Labor sued Miami, Fla.-based ETF Technologies Inc. and its president for failing to deposit and timely forward employee contributions and loan repayments to the company's 401(k) plan. The suit also seeks to appoint a successor to manage the plan, which has been without oversight since the company ceased doing business.

"This action demonstrates our commitment to protect the hard-earned benefits of American workers," said Howard Marsh, director of the Atlanta regional office of the department's Employee Benefits Security Administration (EBSA), which investigated the case.

The suit, filed in federal district court in Miami, alleges that the company and Eric Schaer violated the Employee Retirement Income Security Act (ERISA) when they failed to remit employee contributions and loan repayments to the plan starting July 15, 2002. At the time of the improper transactions, ETF was the plan's administrator. The defendants also abandoned the plan and failed to terminate it and properly distribute its assets to participants.

Plans become orphan plans when they are abandoned by all fiduciaries designated to manage and operate them, leaving participants without a way to transact business and communicate with the plan.

The suit seeks to require the defendants to restore all contributions to the plan with interest, correct all prohibited transactions, and offset any personal benefits from the plan to repay the losses. It also seeks to remove ETF Technologies and Schaer as fiduciaries, permanently bar Schaer from serving any employee benefit plan covered by ERISA and appoint an independent fiduciary to terminate the plan and distribute the assets to eligible participants and beneficiaries.

ETF was a computer programming training facility located throughout Florida, which was dissolved on Sept. 19, 2003. The plan covered 90 participants and held approximately \$430, 899 in assets as of March 2003.

In fiscal year 2004, EBSA achieved record monetary results of \$3.1 billion related to the pension, 401(k), health and other benefits of millions of American workers and their families. Employers and workers can reach EBSA's Atlanta regional office at (404) 562-2156 or can contact EBSA's toll-free number, **1-866-444-EBSA (3272)**, for help with problems relating to private-sector retirement and health plans.

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(Chao v. Eric Schaer)
Civil Action No. 05-CV-21568

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